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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Colombia and Mexico: draft resolution

Protection of migrants

The General Assembly,

Recalling all its previous resolutions on the protection of migrants, the most recent of which is resolution 70/147 of 17 December 2015, and recalling also Human Rights Council resolutions 35/17 of 22 June 2017 and 35/5 of 28 September 2017,[1]

Reaffirming the Universal Declaration of Human Rights,[2] which proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race,

Reaffirming also that everyone has the right to freedom of movement and residence within the borders of each State and the right to leave any country, including his or her own, and to return to his or her country,

Reaffirming further that everyone has the right to recognition everywhere as a person before the law,

Recalling all relevant international instruments, particularly the International Covenant on Civil and Political Rights[3] and the International Covenant on Economic, Social and Cultural Rights,[3] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[4] the International Convention for the Protection of All Persons from Enforced Disappearance,[5] the

[1] See *Official Records of the General Assembly, Seventy-second Session, Supplement No. 53* (A/72/53), chap. V, sect. A.
[2] Resolution 217 A (III).
[3] See resolution 2200 A (XXI), annex.
[4] United Nations, *Treaty Series*, vol. 1465, No. 24841.
[5] Ibid., vol. 2716, No. 48088.

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Convention on the Elimination of All Forms of Discrimination against Women,[6] the Convention on the Rights of the Child,[7] the International Convention on the Elimination of All Forms of Racial Discrimination,[8] the Convention on the Rights of Persons with Disabilities,[9] the Vienna Convention on Consular Relations,[10] the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[11] and the United Nations Convention against Transnational Organized Crime and the Protocols thereto,[12] in particular the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime,[13] and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,[14]

Acknowledging the relevant contribution of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to the international system for the protection of migrants,

Welcoming the New York Declaration for Refugees and Migrants, adopted on 19 September 2016 at the High-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants,[15] as well as the preparatory process towards the adoption of a global compact for safe, orderly and regular migration, the modalities of which are outlined in its resolution 71/280 of 6 April 2017,

Recalling also the provisions concerning migrants contained in the outcome documents of major United Nations conferences and summits, including the Outcome of the Conference on the World Financial and Economic Crisis and Its Impact on Development[16] and the 2030 Agenda for Sustainable Development,[17]

Recalling further Commission on Population and Development resolutions 2006/2 of 10 May 2006[18] and 2009/1 of 3 April 2009,[19] and its resolution 2013/1 of 26 April 2013 on new trends in migration: demographic aspects,[20]

Taking note of advisory opinion OC-16/99 of 1 October 1999 on the Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, advisory opinion OC-18/03 of 17 September 2003 on the Juridical Condition and Rights of Undocumented Migrants, and advisory opinion OC-21/14 of 19 August 2014 on the Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, issued by the Inter-American Court of Human Rights,

Taking note also of the Judgment of the International Court of Justice of 31 March 2004 in the case concerning *Avena and Other Mexican Nationals*[21] and the

[6] Ibid., vol. 1249, No. 20378.
[7] Ibid., vol. 1577, No. 27531.
[8] Ibid., vol. 660, No. 9464.
[9] Ibid., vol. 2515, No. 44910.
[10] Ibid., vol. 596, No. 8638.
[11] Ibid., vol. 2220, No. 39481.
[12] Ibid., vols. 2225, 2237, 2241 and 2326, No. 39574.
[13] Ibid., vol. 2241, No. 39574.
[14] Ibid., vol. 2237, No. 39574.
[15] Resolution 71/1.
[16] Resolution 63/303, annex.
[17] Resolution 70/1.
[18] See *Official Records of the Economic and Social Council, 2006, Supplement No. 5* (E/2006/25), chap. I, sect. B.
[19] Ibid., *2009, Supplement No. 5* (E/2009/25), chap. I, sect. B.
[20] Ibid., *2013, Supplement No. 5* (E/2013/25), chap. I, sect. B.

Judgment of the Court of 19 January 2009 regarding the request for interpretation of the *Avena* Judgment,[22] and recalling the obligations of States reaffirmed in both decisions,

Underlining the importance of the Human Rights Council in promoting respect for the protection of the human rights and fundamental freedoms of all, including migrants,

Recognizing that women represent almost half of all international migrants, and in this regard recognizing also that women migrant workers are important contributors to social and economic development in countries of origin and destination, and underlining the value and dignity of their labour, including the labour of domestic workers,

Recalling the adoption of the 2030 Agenda for Sustainable Development in its entirety, and recalling Sustainable Development Goals 8 and 10, including the targets on the protection of labour rights and promotion of safe and secure working environments for all workers, including migrant workers, in particular women migrants and those in precarious employment, and on the facilitation of orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies,

Recognizing the importance of the second High-level Dialogue on International Migration and Development, held on 3 and 4 October 2013, which recognized the important contribution of migration in realizing the Millennium Development Goals and recognized that human mobility is a key factor for sustainable development,

Noting the ninth summit meeting of the Global Forum on Migration and Development chaired by Bangladesh in Dhaka from 10 to 12 December 2016, under the overarching theme "Migration that works for the sustainable development of all: towards a transformative migration agenda", and the tenth summit meeting of the Global Forum, co-chaired by Germany and Morocco in Berlin from 28 to 30 June 2017, under the overarching theme "Towards a global social contract on migration and development",

Acknowledging the cultural and economic contributions made by migrants to their communities of origin and destination and the need to identify appropriate means of maximizing development benefits, to respond to the challenges that migration poses to countries of origin, transit and destination, to promote dignified, humane treatment with applicable protections and access to basic services, and to strengthen mechanisms for international cooperation,

Emphasizing the multidimensional character of international migration, the importance of international, regional and bilateral cooperation and dialogue in this regard, as appropriate, and the need to protect the human rights of all migrants, particularly at a time when migration flows have increased in the globalized economy and take place in a context of continued security concerns,

Acknowledging the complexity of migratory flows and that international migration movements also occur within the same geographical regions, and in this context calling for a better understanding of migration patterns across and within regions,

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[21] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 4* (A/59/4), chap. V, sect. A.

[22] Ibid., *Sixty-fourth Session, Supplement No. 4* (A/64/4), chap. V, sect. B.

Deeply concerned at the large and growing number of migrants, especially women and children, including those unaccompanied or separated from their parents, who place themselves in a vulnerable situation by crossing or attempting to cross international borders, and recognizing the obligation of States to respect the human rights of those migrants in accordance with their applicable international human rights obligations,

Recognizing the importance of coordinating international efforts to provide assistance and support to migrants in vulnerable situations and, as appropriate, facilitate their voluntary return to their countries of origin or procedures for determining the need for international protection while respecting the principle of non-refoulement,

Bearing in mind the obligations of States under international law, as applicable, to exercise due diligence to prevent crimes targeting migrants and to investigate and punish perpetrators, and that not doing so violates and impairs or nullifies the enjoyment of the human rights and fundamental freedoms of victims,

Affirming that migrant smuggling and crimes against migrants, including trafficking in persons, continue to pose a serious challenge and require a concerted international assessment and response and genuine multilateral cooperation among countries of origin, transit and destination for their eradication,

Bearing in mind that policies and initiatives on the issue of migration, including those that refer to the orderly management of migration, should promote holistic approaches that take into account the causes and consequences of the phenomenon, as well as full respect for the human rights and fundamental freedoms of migrants,

Stressing the importance of all regulations and laws regarding irregular migration, at all levels of government, being in accordance with the obligations of States under international law, including international human rights law,

Stressing also the obligation of States to protect the human rights of migrants regardless of their migration status, including when implementing their specific migration and border security policies, and expressing its concern at measures which, including in the context of policies aimed at reducing irregular migration, treat irregular migration as a criminal rather than an administrative offence, where the effect of doing so is to deny migrants the full enjoyment of their human rights and fundamental freedoms, and in this regard recalling that sanctions and the treatment given to irregular migrants should be commensurate with their offences,

Aware that, as criminals take advantage of migratory flows and attempt to circumvent restrictive immigration policies and border controls, migrants become more vulnerable to, inter alia, kidnapping, extortion, forced labour, sexual exploitation, physical assault, debt servitude and abandonment,

Recognizing the contributions of young migrants to countries of origin and destination, and in that regard encouraging States to consider the specific circumstances and needs of young migrants,

Recognizing the obligations of countries of origin, transit and destination under international human rights law,

Underlining the importance for States, in cooperation with civil society, including non-governmental organizations, workers' organizations and the private sector, among other relevant stakeholders, to undertake information campaigns aimed at clarifying opportunities, limitations, risks and rights in the event of migration in order to enable everyone to make informed decisions and to prevent anyone from utilizing dangerous means to cross international borders,

1. *Calls upon* States to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children, and to address international migration through international, regional or bilateral cooperation and dialogue and a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants and avoiding approaches that might aggravate their vulnerability;

2. *Expresses its concern* about the impact of financial and economic crises as well as natural disasters and the effects of climate-related phenomena on international migration and migrants, and in that regard urges Governments to combat unfair and discriminatory treatment of migrants, in particular migrant workers and their families;

3. *Reaffirms* the rights set forth in the Universal Declaration of Human Rights[1] and the obligations of States under the International Covenants on Human Rights,[2] and in this regard:

(a) Strongly condemns acts, manifestations and expressions of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them, including on the basis of religion or belief, and urges States to apply and, where needed, to reinforce existing laws when hate crimes, xenophobic or intolerant acts, manifestations or expressions against migrants occur, in order to eradicate impunity for those who commit those acts and, where appropriate, to provide effective remedy to the victims;

(b) Encourages States to establish or, when appropriate, strengthen mechanisms which allow migrants to report alleged cases of abuse by relevant authorities and employers without fear of reprisal, and which allow for such complaints to be addressed fairly;

(c) Expresses concern about legislation adopted by some States that results in measures and practices that may restrict the human rights and fundamental freedoms of migrants, and reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants;

(d) Calls upon States to ensure that their laws and policies, including in the areas of counter-terrorism and combating transnational organized crime, such as trafficking in persons and smuggling of migrants, fully respect the human rights of migrants;

(e) Calls upon States that have not done so to consider signing and ratifying or acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[10] as a matter of priority, and requests the Secretary-General to continue his efforts to promote and raise awareness of the Convention;

(f) Takes note of the reports of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on its twenty-third and twenty-fourth sessions,[23] twenty-fifth and twenty-sixth sessions[24] and twenty-seventh session;

[23] Ibid., *Seventy-first Session, Supplement No. 48* (A/71/48).
[24] Ibid., *Seventy-second Session, Supplement No. 48* (A/72/48).

4. *Also reaffirms* the duty of States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their migration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party, and therefore:

(a) Calls upon all States to respect the human rights and inherent dignity of migrants, to put an end to arbitrary arrest and detention and, in order to avoid excessive detention of irregular migrants, to review, where necessary, detention periods and to use alternatives to detention, where appropriate, including measures that have been successfully implemented by some States;

(b) Encourages States to put in place, if they have not yet done so, appropriate systems and procedures in order to ensure that the best interests of the child are a primary consideration in all actions or decisions concerning migrant children, regardless of their migration status, and to use, when applicable, alternatives to the detention of migrant children;

(c) Encourages States to cooperate and to take appropriate measures, in full conformity with their obligations under international human rights law, to prevent, combat and address the smuggling of migrants, including strengthening laws, policies, information-sharing and joint operational functions, enhancing capacities and support opportunities for migration in a well-managed, safe and dignified manner and strengthening legislative methods for criminalizing acts of smuggling migrants, particularly women and children;

(d) Urges all States to adopt effective measures to prevent and punish any form of illegal deprivation of liberty of migrants by individuals or groups;

(e) Requests States to adopt concrete measures to prevent the violation of the human rights of migrants while in transit, including in ports and airports and at borders and migration checkpoints, and to adequately train public officials who work in those facilities and in border areas to treat migrants respectfully and in accordance with their obligations under international human rights law;

(f) Underlines the right of migrants to return to their country of citizenship, and recalls that States must ensure that their returning nationals are duly received;

(g) Calls upon States to analyse and implement, where appropriate, mechanisms for the safe and orderly administration of returning migrants, with particular attention to the human rights of migrants, in accordance with their obligations under international law;

(h) Calls upon States to prosecute, in conformity with applicable law, acts of violation of the human rights of migrants and their families, such as arbitrary detention, torture and violations of the right to life, including extrajudicial executions, during their transit from the country of origin to the country of destination and vice versa, including transit across national borders;

(i) Recognizes the particular vulnerability of migrants in transit situations, including through national borders, and the need to ensure full respect for their human rights also in these circumstances;

(j) Also recognizes the importance of promoting respect for human rights in coordinated efforts of the international community to assist and support migrants who are stranded or in vulnerable situations;

(k) Reaffirms emphatically the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations,[9] in particular with regard to the right of all foreign nationals, regardless of their migration status,

to communicate with a consular official of the sending State in case of arrest, imprisonment, custody or detention, and the obligation of the receiving State to inform the foreign national without delay of his or her rights under the Convention;

(l) Requests all States, in conformity with national legislation and applicable international legal instruments to which they are party, to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers' labour relations and working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association;

(m) Invites Member States to consider ratifying relevant conventions of the International Labour Organization, including the Domestic Workers Convention, 2011 (No. 189) on decent work for domestic workers;

(n) Encourages all States to remove unlawful obstacles, where they exist, that may prevent the safe, transparent, unrestricted and expeditious transfer of remittances, earnings, assets and pensions of migrants to their country of origin or to any other countries, and, in conformity with applicable laws, regulations and agreements, to consider, as appropriate, measures to resolve any identified issues that may impede such transfers or subject them to impractical restrictions;

(o) Recalls that the Universal Declaration of Human Rights recognizes that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him or her;

5. *Emphasizes* the importance of protecting persons in vulnerable situations, and in this regard:

(a) Expresses its concern about the increase in the activities and profits of transnational and national organized crime entities and others who profit from crimes against migrants, especially migrant women and children, without regard for dangerous and inhumane conditions, and in flagrant violation of national laws and international law and contrary to international standards;

(b) Also expresses its concern about the high level of impunity enjoyed by traffickers and their accomplices as well as other members of organized crime entities and, in this context, the denial of rights and justice to migrants who have suffered from abuse;

(c) Calls upon States, within the framework of applicable international law, to take steps to ensure that their national procedures at international borders include adequate safeguards to protect the dignity, safety and human rights of all migrants;

(d) Welcomes immigration programmes, adopted by some countries, that allow migrants to integrate fully into the host countries, facilitate family reunification and promote a harmonious, tolerant and respectful environment, and encourages States to consider the possibility of adopting these types of programmes;

(e) Calls upon States that have not already done so to provide for the protection of the human rights of women migrant workers, to promote fair labour conditions and to ensure that all women, including care workers, are legally protected against violence and exploitation;

(f) Encourages States to implement gender-sensitive policies and programmes for women migrant workers, to provide safe and legal channels that recognize the skills and education of women migrant workers and, as appropriate, to facilitate their productive employment, decent work and integration into the labour force, including in the fields of education and science and technology;

(g) Encourages all States to develop international migration policies and programmes that include a gender perspective, in order to adopt the measures necessary to better protect women and girls against dangers and abuse during migration;

(h) Calls upon States to protect the human rights of migrant children, given their vulnerability, particularly unaccompanied migrant children, ensuring that the best interests of the child are a primary consideration in their legislation, policies and practices, including on integration, return and family reunification;

(i) Encourages all States to prevent and eliminate discriminatory policies and legislation at all levels of government that deny migrant children access to education and, while taking into account the best interests of the child as a primary consideration, to foster the successful integration of migrant children into the education system and the removal of barriers to their education in host countries and countries of origin;

(j) Reminds all States that all persons, including migrants, should have access to lifelong learning opportunities that help them acquire the knowledge and skills needed to take advantage of opportunities and to participate fully in society;

(k) Urges States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, including unaccompanied children and persons with disabilities, and take into account, in conformity with their international obligations and commitments, the principle of the best interests of the child, clarity of reception and care arrangements and family reunification;

(l) Urges States parties to the United Nations Convention against Transnational Organized Crime and the Protocols thereto,[11] in particular the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime,[12] and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,[13] to implement them fully, and calls upon States that have not done so to consider ratifying or acceding to them as a matter of priority;

6. *Encourages* States to take into account the conclusions and recommendations of the study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration[25] when designing and implementing their migration policies;

7. *Also encourages* States to protect migrants from becoming victims of national and transnational organized crime, including kidnapping and trafficking and, in some instances, smuggling, including through the implementation of programmes and policies that prevent victimization and guarantee protection and access to medical, psychosocial and legal assistance, where appropriate;

8. *Encourages* Member States that have not already done so to enact national legislation and to take further effective measures to combat trafficking in persons and smuggling of migrants, recognizing that these crimes may endanger the lives of migrants or subject them to harm, servitude, exploitation, debt bondage, slavery, sexual exploitation or forced labour, and also encourages Member States to strengthen international cooperation to prevent, investigate and combat such

[25] A/HRC/15/29.

trafficking in persons and smuggling of migrants and to identify and disrupt financial flows related to these activities;

9. *Stresses* the importance of international, regional and bilateral cooperation in the protection of the human rights of migrants, and therefore:

(a) Requests all States, international organizations and relevant stakeholders to take into account in their policies and initiatives on migration issues the global character of the migratory phenomenon and to give due consideration to international, regional and bilateral cooperation in this field, including by undertaking dialogues on migration that include countries of origin, transit and destination, as well as civil society, including migrants, with a view to addressing, in a comprehensive manner, inter alia, its causes and consequences and the challenge of undocumented or irregular migration, granting priority to the protection of the human rights of migrants;

(b) Encourages States to promote the effective implementation of the 2030 Agenda for Sustainable Development,[16] including its target 10.7 on the facilitation of orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies;

(c) Also encourages States to take the measures necessary to achieve policy coherence on migration at the national, regional and international levels, including by ensuring coordinated child protection policies and systems across borders that are in full compliance with international human rights law;

(d) Further encourages States to cooperate effectively in protecting witnesses in cases of smuggling of migrants, regardless of their migration status;

(e) Encourages States to cooperate effectively in protecting witnesses and victims in cases of trafficking in persons, regardless of their migration status;

(f) Calls upon the United Nations system and other relevant international organizations and multilateral institutions to enhance their cooperation in the development of methodologies for the collection and processing of statistical data on international migration and the situation of migrants in countries of origin, transit and destination and to assist Member States in their capacity-building efforts in this regard;

(g) Encourages States to include, as appropriate, information on the implementation of their international obligations related to the human rights of migrants in their national reports to the universal periodic review mechanism of the Human Rights Council;

10. *Welcomes* the consideration afforded to the issues of migration, development and human rights in the 2030 Agenda for Sustainable Development;

11. *Reaffirms* the commitments of the New York Declaration for Refugees and Migrants,[15] and urges Member States and the United Nations system to work cooperatively to implement the Declaration;

12. *Encourages* States, relevant international organizations, civil society, including non-governmental organizations, and the private sector to continue and to enhance their dialogue in relevant international meetings with a view to strengthening and making more inclusive public policies aimed at promoting and respecting human rights, including those of migrants;

13. *Requests* Governments and international organizations to take appropriate measures to give due consideration to the declaration of the High-level

Dialogue on International Migration and Development, held on 3 and 4 October 2013;[26]

14. *Recognizes* the importance of the contribution of the United Nations High Commissioner for Human Rights, the Chair of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Special Rapporteur of the Human Rights Council on the human rights of migrants, as well as other key actors, to the discussion on international migration;

15. *Invites* the Chair of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to present an oral report on the work of the Committee and to engage in an interactive dialogue with the General Assembly at its seventy-third session, under the item entitled "Promotion and protection of human rights", as a way to enhance communication between the Assembly and the Committee;

16. *Invites* the Special Rapporteur on the human rights of migrants to submit his report to the General Assembly and to engage in an interactive dialogue at its seventy-third session, under the item entitled "Promotion and protection of human rights";

17. *Takes note* of the reports of the Secretary-General on the promotion and protection of human rights, including ways and means to promote the human rights of migrants,[27] and on the human rights of migrants,[28] which outlines proposals for the development of the global compact for safe, orderly and regular migration, with a view, in particular, to ensuring that human rights are effectively included and mainstreamed in the global compact;

18. *Requests* the Secretary-General to submit to the General Assembly and the Human Rights Council at their seventy-third and thirty-ninth sessions, respectively, a comprehensive report entitled "Human rights of migrants", covering all aspects of the implementation of the present resolution;

19. *Decides* to remain seized of the matter.

[26] Resolution 68/4.
[27] A/71/284.
[28] A/71/285.